

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

Re:)
Pharmacy License of)
WALGREEN PHARMACY #1908) **STATEMENT OF CHARGES**
License No. 292)
Respondent)

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (1997).
3. General pharmacy license number 292, issued in the name of Walgreen Pharmacy #1908, is current until December 31, 1997.
4. Laura L. Dickinson was employed as the pharmacist in charge of the Walgreen Pharmacy #1908 from December 13, 1990, to July 25, 1995.
5. Theresa D. Waetke was employed as the pharmacist in charge of the Walgreen Pharmacy #1908 from July 26, 1995, to August 27, 1997.
6. Janalyn M. Ginn is currently employed as the pharmacist in charge of the Walgreen Pharmacy #1908 and has been employed in that capacity since August 28, 1997.
7. Respondent currently operates a general pharmacy at 2843 Ingersoll Avenue, Des Moines, Iowa 50312.

COUNT I

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a practice harmful to the public by failing to prevent a medication dispensing error on or about April 5, 1991.

COUNT II

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a practice harmful to the public by failing to prevent repeated unauthorized dispensing of a generic drug to a patient between 1990 and 1992.

COUNT III

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a practice harmful to the public by failing to prevent a medication dispensing error on or about January 25, 1993.

COUNT IV

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a practice harmful to the public by failing to prevent a medication dispensing error on December 19, 1994.

COUNT V

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 6.1, 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with inadequate and/or deficient space and staffing for the prescription department, as observed during a routine pharmacy inspection conducted on April 24, 1995.

COUNT VI

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a

practice harmful to the public by failing to prevent a medication dispensing error on July 17, 1995.

COUNT VII

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a practice harmful to the public by failing to prevent a medication dispensing error on September 11, 1995.

COUNT VIII

The Respondent is charged under Iowa Code § 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 9.1(4)(c), 9.1(4)(j), and 9.1(4)(u) with engaging in a practice harmful to the public by failing to prevent a medication dispensing error on July 31, 1997.

COUNT IX

The Respondent is charged under Iowa Code §§ 155A.15(2)(c) (1997) and 657 Iowa Administrative Code §§ 6.1, 8.1, 8.5(4), 8.19, 8.20, 9.1(4)(b), 9.1(4)(c), 9.1(4)(j), 9.1(4)(u), and 9.1(4)(w) with failure to ensure that all pharmacists at Walgreens Pharmacy # 1908 effectively utilized patient information; conducted prospective drug use review; and provided oral patient counseling; which resulted in or contributed to the medication dispensing errors contained in Counts I, III, IV, VI, VII, and VIII.

THE CIRCUMSTANCES

The Board has received investigative information which alleges the following:

1. A dispensing error is alleged to have occurred at Walgreens Pharmacy # 1908 on April 5, 1991, when prescriptions for the drug Lanoxin® and the drug K-Dur® were refilled for a patient. The prescription for Lanoxin® was correctly refilled with Lanoxin®, but the prescription for K-Dur® was also refilled with Lanoxin®. As a result, the patient received an overdose of Lanoxin® and *no* K-Dur®.

2. A dispensing error is alleged to have occurred at Walgreens Pharmacy # 1908 on January 25, 1993, when incorrect instructions were placed on a prescription label for Suprax® 100mg/5ml Suspension for an infant which resulted in an overdose of medication.

3. Between 1990 and 1992, it is alleged that unauthorized generic drug substitution occurred at Walgreens Pharmacy # 1908 for a patient who received a generic drug product for the drug Synthroid® which was not authorized by the prescriber. As a result of the unauthorized generic drug substitution, it is alleged that the patient experienced poor control of her hypothyroid condition.

4. A dispensing error is alleged to have occurred at Walgreens Pharmacy # 1908 on December 19, 1994, when the drug Procardia XL® was dispensed to a patient who should have received the drug Prilosec®.

5. During a routine pharmacy inspection conducted on April 24, 1995, the space and staffing of the prescription department of Walgreens Pharmacy # 1908 was observed to be inadequate and/or deficient based upon the volume of prescription drug orders received and processed in the prescription department.

6. A dispensing error is alleged to have occurred at Walgreens Pharmacy # 1908 on July 17, 1995, when the drug Lotensin® was dispensed to a patient who should have received Lidex® Cream.

7. A dispensing error is alleged to have occurred at Walgreens Pharmacy # 1908 on September 11, 1995, when a patient received the incorrect strength of a prescription medication.

8. A dispensing error is alleged to have occurred at Walgreens Pharmacy #1908 on July 31, 1997, when the drug Paxil® was dispensed to a patient who should have received the drug Pepcid®. It is further alleged that the patient ingested Paxil® on a regular basis until August 29, 1997.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


Lloyd K. Jessen
Executive Secretary/Director

On this 14th day of October, 1997, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Phyllis A. Olson, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

cc: Linny Emrich
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

| | | |
|------------------------|---|----------------------|
| Re: | } | |
| Pharmacy License of | } | |
| WALGREENS #1908 | } | STIPULATION |
| License No. 292 | } | AND |
| Janalyn M. Ginn, | } | CONSENT ORDER |
| Pharmacist in charge, | } | |
| Respondent | } | |

On this 3rd day of February, 1998, the Iowa Board of Pharmacy Examiners and Walgreens Pharmacy #1908 of Des Moines, Iowa, each hereby agree with the other and stipulate as follows:

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Statement of Charges filed against Respondent on October 14, 1997, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. That Respondent's license to operate a pharmacy was renewed on the 31st day of December, 1997, as evidenced by General Pharmacy License Number 292, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That General Pharmacy License Number 292 issued to and currently held by Respondent is current and in full force until December 31, 1998.
3. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.
4. A Statement of Charges was filed against Respondent on October 14, 1997.

5. This Stipulation and Consent Order is entered into in order to resolve a disputed claim and constitutes no admission on the part of Respondent.

SECTION I

THEREFORE, IT IS HEREBY AGREED that Iowa General Pharmacy License Number 292 issued to Respondent is placed on probation for three (3) years subject expressly to the right of Respondent to request removal of the probation after two years of compliance with this agreement. During the probationary period the Respondent shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and the distribution of controlled substances and comply with the provisions of Section II.

SECTION II

1. Within thirty (30) days of the date of this Order, the Respondent shall pay a civil penalty of \$2500.00 by delivering a check made payable to the Treasurer of the State of Iowa to the Executive Secretary/Director of the Board. The check shall be deposited into the general fund of the State of Iowa.

2. Within thirty (30) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will submit to the Board its written policy and procedure for documenting, resolving, and preventing medication dispensing errors. The policy and procedure shall include a written protocol which describes the procedure for pharmacy employees to follow when a dispensing error occurs. The policy and procedure shall also require that all records of dispensing errors be consistently and periodically evaluated by the pharmacist in charge or his or her designee as part of a cycle

of continuous quality improvement. Records of dispensing errors shall be maintained in the pharmacy for a minimum of two years. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to this policy and procedure.

3. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will provide its written policies and procedures for the following: (a) dispensing accuracy; (b) obtaining, recording, and maintaining patient information; (c) patient counseling; (d) prospective drug use review; and (e) drug product selection. Following review and approval by the Board, the Respondent agrees to adopt, implement, and adhere to these policies and procedures. Respondent also agrees to require all pharmacists and supportive personnel to read the written policies and procedures and to sign written statements certifying that they have read it. Copies of these signed statements shall be maintained by Respondent.

4. The Respondent shall address the issues of adequate space and staffing of the prescription department in a manner that will allow the prescription department to comply with all of the requirements contained in 657 Iowa Administrative Code chapter 6, "General Pharmacy Licenses," which became effective on November 12, 1997.

5. The Respondent shall report any judgment or settlement of a malpractice claim or action and any incident reports relating to dispensing errors brought to their attention by consumers, health care professionals, or others within thirty (30) days of such occurrence.

6. Respondent shall submit to random unannounced visits or inspections by the Board or agents of the Board to verify compliance with this Stipulation and Consent Order.

7. Respondent shall fully and promptly comply with all Orders of the Board and the statutes and rules regulating the practice of pharmacy in Iowa. Any violation of the terms of this Order is grounds for further disciplinary action, upon notice and

opportunity for hearing, for failure to comply with an Order of the Board, in accordance with Iowa Code section 272C.3(2)(a).

8. Should Respondent violate probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and impose additional disciplinary sanctions, including the revocation of Respondent's license to operate a pharmacy. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

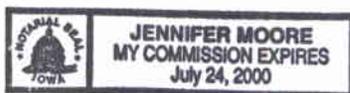
9. Upon successful completion of probation, Respondent's certificate will be fully restored.

10. This Stipulation and Consent Order is subject to approval of a majority of the full Board. If the Board fails to approve this Stipulation and Consent Order, it shall be of no force or effect to either party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.

11. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 28th day of January, 1998.

Janalyn Phillips
WALGREEN PHARMACY #1908
Janalyn M. Ginn, R.Ph.,
Pharmacist in charge,
Respondent

Subscribed and Sworn to before me on this 28th day of January, 1998.



Jennifer Moore
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

12. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 3rd day of February, 1998.

A handwritten signature in cursive script, appearing to read "Phyllis A. Olson", written over a horizontal line.

PHYLLIS A. OLSON, Chairperson
Iowa Board of Pharmacy Examiners
Executive Hills West
1209 East Court Avenue
Des Moines, Iowa 50319

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

| | | |
|--------------------------------|---|-----------------------------|
| Re: |) | Case No. 2001-292 |
| Pharmacy License of |) | |
| WALGREEN PHARMACY #1908 |) | STATEMENT OF CHARGES |
| License No. 292 |) | |
| Respondent |) | |

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2001).
3. Effective January 1, 2001, the Board renewed Respondent general pharmacy license number 292 with Robert J. Rigoni, R.Ph. as pharmacist in charge, allowing Respondent to engage in the operation of pharmacy subject to the laws of the State of Iowa and the rules of the Board.
4. General pharmacy license number 292 is current until December 31, 2001.
5. Upon information and belief, Janalyn M. Phillips was employed as the pharmacist in charge of the Walgreen Pharmacy #1908 from before January 28, 1998 to approximately July, 2000.
6. Upon information and belief, David W. Persinger was employed as the pharmacist in charge of the Walgreen Pharmacy #1908 from approximately July 2000 to December 6, 2000.
7. Upon information and belief, Robert J. Rigoni, R.Ph. is currently employed as the pharmacist in charge of the Walgreen Pharmacy #1908 and has been employed in that capacity since approximately December 8, 2000.
8. The Respondent is currently operating a general pharmacy at 2843 Ingersoll Avenue, Des Moines, Iowa 50312.
9. The Board filed a Statement of Charges against the Respondent on October 14, 1997 that alleged, among other things, that the Respondent engaged in a practice

harmful and detrimental to the public by failing to prevent several dispensing errors, and with inadequate and/or deficient space and staffing in the prescription department. The Statement of Charges was resolved by a Stipulation and Consent Order entered into by the Respondent on January 28, 1998, and accepted by the Board on February 3, 1998.

COUNT I

The Respondent is charged under Iowa Code §155A.15(2) (2001) and 657 Iowa Administrative Code §§ 36.1(4)(c), 31.6(4)(j), and 36.1(4)(u) with engaging in a practice harmful to the public by failing to prevent multiple dispensing errors between March 15, 1998, and July 4, 2001.

COUNT II

The Respondent is charged under Iowa Code § 155A.15(2)(c) (2001) and 657 Iowa Administrative Code §§ 6.1, 36.1(4)(j), and 36.1(4)(u) with inadequate and/or deficient space for the prescription department.

COUNT III

The Respondent is charged under Iowa Code § 155A.15(2)(c) (2001) and 657 Iowa Administrative Code §§ 6.5(4) and 36.1(4)(u) with failure to contain an area suitable for confidential counseling.

THE CIRCUMSTANCES

1. As a term of its probation pursuant to the Stipulation and Consent Order entered into by the Respondent and on January 28, 1998 and accepted by the Board effective February 3, 1998, the Respondent submitted 47 incident reports relating to dispensing errors brought to the Respondent's attention by consumers, health care providers, or others to the Board for dispensing errors that occurred between March 15, 1998 and September 2, 2000.
2. During the Board's investigation of the continuing high volume of dispensing errors occurring at the Respondent's pharmacy, Board investigators learned of at least thirteen additional dispensing errors that occurred at the Respondent's pharmacy between January 1, 2001 and July 4, 2001.
3. The Board's investigation revealed that the Respondent's pharmacy has not made substantial progress in reducing the number of dispensing errors that occur at the Respondent's pharmacy.

4. During the investigation, a pharmacy investigator observed the dispensing area at the Respondent's pharmacy to be too small and cramped based on the amount of staff, supplies, and volume of prescription drug orders received and processed at the Respondent's pharmacy to safely and adequately operate the pharmacy.
5. During the investigation, a pharmacy investigator observed that the pharmacy did not contain an area suitable for confidential patient counseling, as required by the Board's rules.
6. The inadequate space in the Respondent's pharmacy department and the lack of a suitable patient counseling area appear to be potential contributors to the rate of dispensing errors that are continuing to occur at the Respondent's pharmacy.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


Lloyd K. Jessen
Executive Secretary/Director

On this 14 day of Sept., 2001, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.


Matthew C. Osterhaus, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Shauna Russell Shields
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

| | | |
|--------------------------------|---|----------------------|
| Re: |) | Case No. 2001-292 |
| Pharmacy License of |) | |
| WALGREEN PHARMACY #1908 |) | STIPULATION |
| License No. 292 |) | AND |
| Respondent |) | CONSENT ORDER |

COME NOW the Iowa Board of Pharmacy Examiners (“the Board”) and Walgreen Pharmacy #1908 (“Respondent”) and, pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2001), enter into the following Stipulation and Consent Order settling the contested case currently on file.

The licensee disciplinary hearing pending before the Iowa Board of Pharmacy Examiners, on the allegations specified in the Statement of Charges filed against Respondent on September 14, 2001, shall be resolved without proceeding to hearing, as the parties have agreed to the following Stipulation and Consent Order:

1. That the Respondent’s license to operate a pharmacy was renewed effective January 1, 2002 as evidenced by Pharmacist License Number 292, which is recorded in the permanent records of the Iowa Board of Pharmacy Examiners.
2. That General Pharmacy License Number 292 issued to and currently held by Respondent is current and in force until December 31, 2002.
3. That the Iowa Board of Pharmacy Examiners has jurisdiction over the parties and the subject matter herein.

4. A Statement of Charges was filed against Respondent on September 14, 2001.
5. This Stipulation and Consent Order is entered into in order to resolve disputed claims and constitutes no admission on the part of the Respondent.
6. The Respondent shall pay a civil penalty of \$7,500.00 within 30 days of the date of approval of this Stipulation and Consent Order by the Board. The Respondent shall deliver a check made payable to the Treasurer of the State of Iowa to the Executive Secretary/Director of the Board. The check shall be deposited into the general fund of the State of Iowa.
7. The Respondent's license shall be placed on probation for five (5) years, with the following conditions, beginning on the date this Stipulation and Consent Order is accepted by the Board:
 - a. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent will provide its *typewritten* policies and procedures for detecting, documenting, resolving, and preventing medication dispensing errors. The policies and procedures shall also require that all records of dispensing errors be consistently and periodically evaluated by the pharmacist in charge or his designee as part of a cycle of continuous quality improvement. Records of dispensing errors shall be maintained in the pharmacy for a minimum of one year. Following review and approval by the Board, the Respondent agrees to adopt, implement and adhere to these policies and procedures when operating its pharmacy.

- b. As part of its continuous quality improvement program, the Respondent shall require all employees of its prescription department to take and complete the Walgreen Company continuing education initiative on preventing and handling medication errors. Specifically, the Walgreen continuing education initiative includes the following continuing education courses: (1) *The Power of Words: Responding Appropriately to a Patient's Concerns about Quality*, David B. Brushwood, R.Ph., J.D.; (2) *Medication Errors in the Community Pharmacy*, Andrea D. Tassone; and (3) *Using Communication Skills to Improve Health Care*, Carla White-Harris. For all existing employee's, the Respondent shall provide the Board with documentation of each employee's satisfactory completion of the education within six months of the date of the Board's approval of this Stipulation and Consent Order. For any new employees, the Respondent shall provide the Board with documentation of each employees satisfactory completion of the education within six months of the date each employee began working at the Respondent's pharmacy. Pharmacist employees who have taken any of these courses since September 14, 2001 do not have to take the course again.
- c. As part of its continuous quality improvement program, the Respondent shall offer additional training and educational opportunities to employees of the prescription department who make repeated dispensing errors.
- d. Within sixty (60) days of the date of approval of this Stipulation and

Consent Order by the Board, the Respondent will provide its *typewritten* policies and procedures for the following: (a) dispensing accuracy, (b) patient counseling, and (c) prospective drug use review. Following review and approval by the Board, the Respondent agrees to adopt, implement and adhere to these policies and procedures when operating its pharmacy. The Respondent also agrees to require all pharmacists, supportive personnel, and all local management personnel to read the written policies and procedures and to sign written statements certifying that they have read them and agree to comply with the policies and procedures. Copies of these signed statements shall be maintained by the Respondent.

- e. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent shall install a light magnifying glass at the order entry station and use the light magnifying glass to magnify hard copies of prescriptions whenever processing a hard-copy prescription drug order.
- f. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent shall utilize a Baker 2000 or other automated system designed to eliminate drug picking errors when filling all prescription orders.
- g. Within sixty (60) days of the date of approval of this Stipulation and Consent Order by the Board, the Respondent shall remove any shelves containing over-the-counter medications or other products that are within

three feet of the patient counseling area. The Respondent shall maintain this area free and clear of materials that negatively impact the privacy of the patient counseling area.

- h. The current pharmacist-in-charge at the Respondent's pharmacy is Robert J. Rigoni, R.Ph. In the event of a change in the pharmacist-in-charge, the new pharmacist in charge shall be a licensed pharmacist in the State of Iowa whose license is in good standing and not on probation in the State of Iowa or any other State. The Respondent shall notify the Board of any change in the pharmacist-in-charge.
- i. The Respondent shall employ an appropriate number of pharmacists in order to adequately staff the prescription department in a manner that will ensure that the pharmacy is operated competently, safely, legally, and adequately to meet the needs of the patients of the pharmacy.
- j. The Respondent shall ensure that the pharmacist in charge has the authority to make all necessary staffing decisions relating to the Respondent's prescription department, including hiring, dismissing, and/or transferring employees of the prescription department.
- k. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the operation of a pharmacy and the distribution of controlled substances.
- l. The Respondent shall submit to random unannounced visits or inspections by the Board or agents of the Board to verify compliance with this

Stipulation and Consent Order.

- m. The Respondent shall notify all pharmacist employees of its prescription department of the resolution of this case and the probationary terms, conditions, and restrictions imposed on the Respondent by this Stipulation and Consent Order. Within ten (10) days after the approval of this Stipulation and Consent Order or within ten (10) days of when a new pharmacist employee begins working in the Respondent's prescription department, the Respondent shall cause each of its pharmacist employees to report to the Board in writing acknowledging that the employee has read this Stipulation and Consent Order and understands it.
- n. The Respondent shall appear informally before a committee of the Board or the full Board upon the request of the Board, for the purpose of reviewing its performance during the probationary period. Respondent shall be given reasonable notice of the date, time, and place for the appearances. Any such appearance shall be subject to the waiver provisions of 657 Iowa Administrative Code § 35.9.
- o. During probation, Respondent shall report to the Board or its designee quarterly. Said report shall be in writing. The report shall include information regarding the Respondent's staffing levels (including both pharmacists and supportive personnel); any verified dispensing errors that the Respondent identifies or otherwise becomes aware of through information received from consumers, health care professionals, or others;

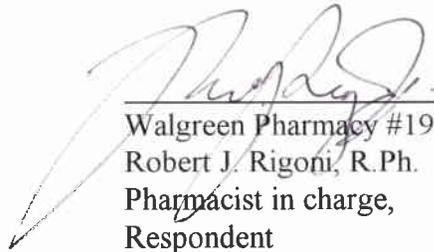
any judgment or settlement of a malpractice claim or action; any losses or thefts of controlled substances; and any further information deemed necessary by the Board from time to time.

8. The Respondent may apply to the Board for modification of the provisions of Respondent's probation, including termination of the probation, after Respondent has successfully completed three (3) years of probation. In the event the Respondent relocates its pharmacy to another location, the Respondent may apply to the Board for modification of the provisions of Respondent's probation, including termination of the probation, after the Respondent has successfully completed one (1) year of operation at the new location. Respondent understands that the determination of whether to modify or terminate its probation will remain in the Board's discretion.
9. The Respondent shall obey all federal and state laws, rules, and regulations substantially related to the operation of a pharmacy.
10. Should the Respondent violate or fail to comply with any of the terms or conditions of this Stipulation and Consent Order, the Board may initiate action to revoke or suspend the Respondent's Iowa license to operate a pharmacy or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 Iowa Administrative Code § 36.1.
11. This Stipulation and Consent Order is the resolution of a contested case. By entering into this Stipulation and Consent Order, the Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of

Charges, and waives any objections to this Stipulation and Consent Order.

12. This proposed settlement is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either party. If the Board approves this Stipulation and Consent Order, it shall be the full and final resolution of this matter.
13. The Board's approval of this Stipulation and Consent Order shall constitute a **FINAL ORDER** of the Board in a disciplinary action.

14. This Stipulation and Consent Order is voluntarily submitted by Respondent to the Board for its consideration on the 12th day of November, 2002.


Walgreen Pharmacy #1908
Robert J. Rigoni, R.Ph.
Pharmacist in charge,
Respondent

Subscribed and sworn to before me Robert J. Rigoni, who has stated to me that he is the pharmacist in charge of Walgreen Pharmacy #1908 and that they are authorized to sign this Stipulation and Consent Order on behalf of said Walgreen Pharmacy #1908 on this 12th day of November, 2002.




NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

Dennis O'Dell
Walgreen Pharmacy #1908
Respondent

By DENNIS O'DELL

Its VICE PRESIDENT

Subscribed and sworn to before me DENNIS O'DELL, who has stated to me that he/she is the VICE PRESIDENT of Walgreen Co. and that he/she is authorized to sign this Stipulation and Consent Order on behalf of said Walgreen Pharmacy #1908 on this 8th day of November, 2002.



Barbara A. Byrne
NOTARY PUBLIC IN AND FOR THE
STATE OF Illinois

15. This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy Examiners on the 4 day of December, 2002.

Katherine A. Linder
KATHERINE A. LINDER, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

APPROVED AS TO FORM:

Dwayne A. Pinon
Dwayne A. Pinon – Attorney for Respondent

Shauna Russell Shields
Shauna Russell Shields – Attorney for State

cc: Dwayne A. Pinon, Senior Attorney
Corporate and Regulatory Law
Walgreen Co.
200 Wilmot Road
Deerfield, Illinois 60015

ATTORNEY FOR RESPONDENT

Shauna Russell Shields
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

ATTORNEY FOR STATE

**BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA**

| | | |
|---------------------------|---|-----------------------------|
| Re: |) | Case No. 2005-117 |
| Pharmacy License of |) | |
| WALGREENS # 07833, |) | STATEMENT OF CHARGES |
| License No. 292, |) | |
| Respondent. |) | |

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Secretary/Director for the Iowa Board of Pharmacy Examiners and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2005).
3. On June 27, 2005, the Board renewed Respondent general pharmacy license number 292 with Sara Morrow as pharmacist in charge, allowing Respondent to engage in the operation of pharmacy subject to the laws of the State of Iowa and the rules of the Board.
4. General pharmacy license number 292 is current until December 31, 2006.
5. Respondent is currently operating a general pharmacy at 3501 Ingersoll Avenue, Des Moines, Iowa 50312, with Sarah Morrow as the pharmacist-in-charge.
6. The Board filed a Statement of Charges against the Respondent on October 14, 1997, which alleged, among other things, that the Respondent engaged in a practice harmful and detrimental to the public by failing to prevent several dispensing errors, and with inadequate and/or deficient space and staffing in the prescription department. The Statement of Charges was resolved by a Stipulation and Consent Order entered into by the Respondent on January 28, 1998, and accepted by the Board on February 3, 1998. The Stipulation and Consent Order placed the Respondent's pharmacy license on probation with conditions for three years. The Respondent also agreed to pay a fine of \$2,500.
7. On September 14, 2001, the Board filed another Statement of Charges against the Respondent which alleged that the Respondent continued to engage in a practice harmful to the public by failing to prevent multiple dispensing errors. The Respondent was also charged with inadequate and/or deficient space for the prescription department and with failure to provide an area suitable for confidential patient counseling. The Statement of Charges was resolved by a

Stipulation and Consent Order entered into by the Respondent on November 12, 2002, and accepted by the Board on December 4, 2002. The Stipulation and Consent Order placed the Respondent's pharmacy license on probation with conditions for five years. The Respondent also agreed to pay a fine of \$7,500.

A. CHARGES

COUNT I – FAILURE TO COMPLY WITH BOARD ORDER

Respondent is charged with a failure to comply with the terms of a Stipulation and Consent Order issued by the Iowa Board of Pharmacy Examiners on December 4, 2002, in violation of Iowa Code § 272C.3(2)(a) (2005).

COUNT II – WILLFUL AND REPEATED VIOLATION OF RULES

Respondent is charged with willful and repeated violations of Iowa Code chapters 147 and 272C (2005) and the administrative rules of the Iowa Board of Pharmacy Examiners in violation of 657 Iowa Administrative Code § 36.1(4)(i).

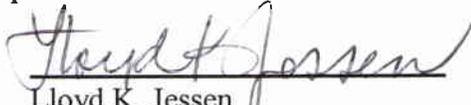
COUNT III – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.15(2)(c) (2005) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

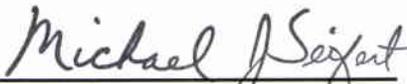
B. CIRCUMSTANCES

Circumstances supporting the above charges are set forth in Attachment A.

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.


Lloyd K. Jessen
Executive Secretary/Director

On this 27th day of January 2006, the Iowa Board of Pharmacy Examiners found probable cause to file this Statement of Charges and to order a hearing in this case.



Michael J. Seifert
Michael J. Seifert, Chairperson
Iowa Board of Pharmacy Examiners
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

WalgreensIngersoll-SOC.doc

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

| | | |
|---------------------|---|---------------------|
| IN THE MATTER OF: |) | CASE NO: 2005-117 |
| |) | DIA NO. 06PHB002 |
| Pharmacy License of |) | |
| WALGREENS #07833, |) | FINDINGS OF FACT, |
| License No. 292 |) | CONCLUSIONS OF LAW, |
| Respondent |) | DECISION AND ORDER |

On January 27, 2006, the Iowa Board of Pharmacy Examiners (Board) found probable cause to file a Statement of Charges against Walgreens #07833 (hereinafter "Walgreens"), a licensed pharmacy located at 3501 Ingersoll Avenue, Des Moines, Iowa. The Statement of Charges alleges that Walgreens:

COUNT I: Violated Iowa Code section 272C.3(2)(a)(2005) by a failure to comply with the terms of a Stipulation and Consent Order issued by the Board on December 4, 2002.

COUNT II: Violated 657 IAC 36.1(4)"i" by willful and repeated violations of Iowa Code chapters 147 and 272C(2005) and the Board's administrative rules.

COUNT III: Violated Iowa Code section 155A.15(2)(c)(2005) and 657 IAC 36.1(4)(b) by a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa.

Circumstances supporting the charges were set forth in Attachment A to the Statement of Charges.

A Notice of Hearing was issued on January 30, 2006. The hearing was later consolidated with the hearing on a related Statement of Charges issued to Respondent Sarah Morrow and the hearing was continued, at the request of both Respondents.¹ The consolidated hearing on the Statements of Charges was held on April 20, 2006 at 9:00 a.m. at the Board's offices in Des Moines, Iowa. The following members of the Board served as presiding officers for the hearing: Michael J. Seifert, Chairperson; Katherine A.

¹ This Decision and Order only resolves the Statement of Charges against Respondent Walgreens; the Board is issuing a separate decision with respect to the Statement of Charges against Respondent Sarah Morrow.

Linder; Vernon H. Benjamin; Paul Abramowitz, Leman Olson, and Barbara O'Roake. Attorney Kevin Reynolds represented Walgreens. Attorney Michael Sellers represented Sarah Morrow. Assistant Attorney General Scott Galenbeck represented the state. The hearing was closed to the public at the election of both Respondents, in accordance with Iowa Code section 272C.6(1).

Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was later instructed to prepare the Board's written Decision and Order for their review, in conformance with their deliberations. Board deliberations were postponed until April 26, 2006, to provide Board members an opportunity to review Walgreens' Exhibit 1, which was submitted at the hearing on compact disc, and Walgreens' Trial Brief. Katherine Linder did not participate in deliberations because a written decision could not be prepared for Board review prior to the end of her term on April 30, 2006. Vernon Benjamin was unavailable to participate in deliberations due to a death in his family.

THE RECORD

The record includes the Statement of Charges filed against Walgreens; Notice of Hearing; Walgreen Co.'s Motion to Join Respondent Sarah Morrow's Motion For Continuance of Hearing; Walgreen's Trial Brief; the testimony of the witnesses, and the following exhibits:

| | |
|----------------------|--|
| State Exhibit A: | Statement of Charges against Respondent Walgreens, 1/27/06 |
| State Exhibit B: | Notice of Hearing, 1/30/06 |
| State Exhibit C: | Investigative Report, 11/15/05 |
| State Exhibit D: | Bag/Audit Procedure/New Prescription Audits |
| State Exhibit E: | Statement of Charges against Respondent Morrow, 1/27/06 |
| State Exhibit F: | Notice of Hearing, 1/30/06 |
| State Exhibit H: | Same as D |
| State Exhibit I: | Minutes of Iowa Board of Pharmacy Examiners, January 30-31, 2001 |
| State Exhibit J: | Procedures submitted to Board 1/31/01 |
| State Exhibit K: | Letter dated 12/24/02 (Jessen to Walgreens) |
| Walgreens Exhibit 1: | Compact Disc of Documents produced by Board in response to |

| | Respondent's | Request | for |
|----------------------|--|--|-----|
| Walgreens Exhibit 2: | Production | Index of documents on the compact disc | |
| Walgreens Exhibit 3: | Request for Production of Documents | | |
| Walgreens Exhibit 4: | Letter of Education, | 8/19/05 | |
| Walgreens Exhibit 5: | Letter dated 2/28/06 (Reynolds to Galenbeck) | | |

FINDINGS OF FACT

1. Walgreens #07833 holds general pharmacy license number 292 for its location at 3501 Ingersoll Avenue, Des Moines Iowa. The license allows Walgreens to operate the pharmacy, subject to the laws of the state of Iowa and the rules of the Board. Walgreens has a history of disciplinary action by this Board and license number 292 is currently on probation. (State Exhibits A, C)

a. On October 14, 1997, the Board filed a Statement of Charges alleging, in part, that Walgreens engaged in a practice harmful or detrimental to the public by failing to prevent several dispensing errors. The Statement of Charges also alleged inadequate and/or deficient space and staffing in the prescription department.

The Statement of Charges was resolved by a Stipulation and Consent Order signed by Walgreens on January 28, 1998 and approved by the Board on February 3, 1998. The Stipulation and Consent Order placed Walgreens' pharmacy license no. 292 on probation with conditions for a period of three years. Walgreens agreed to pay a fine of \$2,500. (State Exhibit C)

b. On September 14, 2001, the Board filed a second Statement of Charges against Walgreens alleging that it continued to engage in a practice harmful to the public by failing to prevent multiple dispensing errors. Walgreens was also charged with inadequate and/or deficient space for the prescription department and with failure to provide an area suitable for patient counseling.

The second Statement of Charges was resolved by a Stipulation and Consent Order signed by Walgreens on November 12, 2002 and approved by the Board on December 4, 2002. The Stipulation and Consent Order placed Walgreens' pharmacy license no. 292 on probation with conditions for a

period of five years. Walgreens also agreed to pay a fine of \$7,500. (State Exhibit C)

2. The December 4, 2002 Stipulation and Consent Order (State Exhibit C) provided numerous terms of probation, including but not limited to:

a. Policies and Procedures. Following review and approval by the Board, Walgreens agreed to adopt, implement, and adhere to policies and procedures for detecting, documenting, resolving, and preventing medication dispensing errors. (Paragraph 7a)

Following review and approval by the Board, Walgreens also agreed to adopt, implement and adhere to policies and procedures for dispensing accuracy, patient counseling and prospective drug review. Walgreens agreed that all pharmacists, supportive personnel, and all local management personnel would sign statements certifying that they have read the policies and procedures and agree to abide by them. (Paragraph 7d).

In a letter dated December 24, 2002, the Board's Executive Director advised Walgreens that the policies and procedures were due in the Board office no later than February 2, 2003. (State Exhibit K)

b. Continuing Education. As part of its continuous quality improvement program, Walgreens agreed to require *all employees of its prescription department* to take and complete the Walgreen Company continuing education initiative on preventing and handling medication errors, consisting of three specific named courses. Walgreens agreed to provide the Board with documentation of each employee's completion of the education within six months of the Board's approval of the Stipulation and Consent Order. Walgreens agreed to provide the Board with documentation of education completion for *any new employees* within six months of the date each employee began working at Respondent's pharmacy. *Pharmacist employees* who have taken any of the courses since September 14, 2001 were not required to retake the course. (Paragraph 7b, emphasis added)

c. Lighted Magnifying Glass. Walgreens agreed to install a light magnifying glass at the order entry station and use the light magnifying glass to magnify hard copies of

prescriptions whenever processing a hard-copy prescription order. (Paragraph 7e)

d. Unannounced Visits To Verify Compliance. Walgreens agreed to submit to random unannounced visits or inspections by the Board or agents of the Board to verify compliance with the Stipulation and Consent Order. (Paragraph 7l)

e. Signed Acknowledgements of Stipulation and Consent Order. Signed Acknowledgements of Stipulation and Consent Order. Respondent agreed to cause all pharmacist employees to report in writing to the Board, within ten (10) days of approval of the Stipulation and Consent Order or within ten (10) days of starting employment, that they read and understood the Stipulation and Consent Order. (Paragraph 7m)

f. Quarterly Reports. Walgreens agreed to submit quarterly written reports to the Board that included information on staffing levels, any verified dispensing errors identified by Walgreens or that come to Walgreens attention by information received from consumers, health care professionals, or others, any judgment or settlement of malpractice claim or action, any losses or thefts of controlled substances, and any further information deemed necessary by the Board from time to time. (Paragraph 7o) In a letter to Walgreens dated December 24, 2002, the Board's Executive Director advised Walgreens that the quarterly reports were due on or before March 5, June 5, September 5, and December 5 of each year. (State Exhibit K)

Paragraph 8 of the Stipulation and Consent Order provided that Walgreens may apply to the Board for modifications of provisions of probation, including termination of probation, after Respondent successfully completes three (3) years of probation. In the event Walgreens relocated its pharmacy, it could apply to modify or terminate probation after successful completion of one year of probation at the new location. The Board retained discretion to determine whether to modify or terminate Walgreens' probation.

3. The Stipulation and Consent Order identified the pharmacist-in-charge at that time as Robert J. Rigoni, R.Ph. The Stipulation and Consent Order required Walgreens to notify the Board of any change in the pharmacist-in-charge. The

pharmacist-in-charge was required to be licensed and in good standing in Iowa and could not be on probation in Iowa or any other state. Walgreens agreed to ensure that the pharmacist-in-charge has the authority to make all staffing decisions relating to Walgreens pharmacy department, including hiring, dismissing, and/or transferring employees of the new prescription department. (Paragraphs 7h, 7j)

Robert Rigoni resigned from Walgreens, effective April 8, 2003, and notified the Board of this fact. The next pharmacist-in-charge who is mentioned in the record is Hillary Corson. Sarah Morrow, R.Ph., assumed the duties of pharmacist-in-charge from Hillary Corson on June 9, 2005. Morrow had previously served as pharmacist-in-charge at a West Des Moines Walgreens and had previously been employed as the overnight pharmacist at Respondent Walgreens. (Testimony of Sarah Morrow; Walgreens Exhibit 1)

4. Jennifer Mallicoat is a licensed pharmacist employed by the Board as a Compliance Officer/Investigator. In November 2005, the Board's Executive Director directed Mallicoat to conduct an inspection of Walgreens pharmacy to determine their compliance with the December 4, 2002 Stipulation and Consent Order. In preparation for her inspection, Mallicoat reviewed the following documents: the Stipulation and Consent Order; a letter from the Board's Executive Director dated December 24, 2002 to Walgreens, summarizing the requirements of the Stipulation and Consent Order; the pharmacy license renewal applications; and one file on Walgreens that was maintained by the Board.

Pharmacy license renewal forms must list all new employees since the last renewal. Based on her review of the renewal forms, Mallicoat determined that Walgreens had employed nine (9) pharmacists², thirty-three (33) pharmacy technicians, and three (3) other personnel in the pharmacy department since the Stipulation and Consent Order was approved. These numbers did not include "floater" or fill-in pharmacists or technicians, nor did it include six new employees that had been hired since August 31, 2005. Walgreens uses a "floater" pharmacist at least two shifts per week. These numbers also did not include any change of staff that occurred before the license renewal form was due.

Mallicoat had incomplete information at the time of her inspection because she did not know that the Board also had a

² Mallicoat later revised this to eleven (11) pharmacists.

second file concerning this Walgreens. Mallicoat did not discover that there was a second Walgreens' file maintained by the Board until Tuesday, April 18, 2005, two days prior to the hearing. In her testimony at hearing, Mallicoat modified some of her initial findings, based on her review of the contents of the second Board file, which contained additional information relevant to Walgreens' compliance. (Testimony of Jennifer Mallicoat; State Exhibits C, K)

a. In the first Board file, Mallicoat found store-specific policies and procedures that had been submitted to the Board by Greg Meyers, Walgreens' previous District Pharmacy Supervisor.³ Mallicoat thought that Meyers submitted these policies and procedures in January 2003, after the Board's approval of the Stipulation and Consent Order. In fact, Meyers submitted these policies and procedures to the Board at its meeting on January 31, 2001, approximately 11 months prior to the approval of the Stipulation and Consent Order. The minutes of the January 31, 2001 Board meeting state that Greg Meyers appeared before the Board but do not expressly state that the Board approved the policies and procedures. Mallicoat did not realize that Meyers submitted the policies and procedures in 2001 until just prior to the April 20th hearing before the Board. (Testimony of Jennifer Mallicoat; State Exhibit I, J)

b. Mallicoat used Meyers' store specific policies and procedures to determine whether Walgreens was complying with paragraphs 7b and 7d of the Stipulation and Consent Order because she did not find any other policies and procedures in the file that she reviewed. When Mallicoat reviewed the second Walgreens' Board file on April 18, 2006, she found company-wide policies entitled "Continuous Quality Improvement Program Overview," "Prospective DUR Guidelines (Revised 11/17/99)"; "Accepting and Filling New Prescriptions (Revised 11/17/99)," "Pharmacy Continuous Quality Improvement"; and "Walgreens Pharmacy Quality Assurance Report." These policies were not date stamped by the Board so it is difficult to determine precisely when they were submitted. However, the documents had print dates in the lower right corner of 12/30/02 and 1/7/03 and chronologically appear after the submission of the quarterly reports submitted on March 3, 2003 and June 5,

³ Laura Dickinson replaced Greg Meyers as Walgreens' District Pharmacy Supervisor on May 10, 2003. (Testimony of Laura Dickinson)

2003. It is likely that the company wide policies were submitted as attachments to one of these first two quarterly reports submitted by Walgreens, but that Board staff only date stamped the quarterly report and not the attachments. There is no evidence in the record that the Board reviewed and approved the company wide policies. (Testimony of Jennifer Mallicoat; Walgreens Exhibits 1, 2)

5. On November 7, 2005, Jennifer Mallicoat called Sarah Morrow, Walgreen's pharmacist-in-charge, and told her that she would be stopping by to go over the Stipulation and Order. Morrow assured Mallicoat that she was familiar with the Stipulation and Order. Later that day, Mallicoat and another compliance officer visited Walgreens and met with Morrow. On November 15, 2005, Mallicoat filed a Memorandum with the Board outlining her findings concerning Walgreen's compliance with the terms of the Stipulation and Order. These included her specific findings that Walgreens had not adhered to paragraphs 7a, 7b, 7d, 7e, 7l, 7m, and 7o of the Stipulation and Consent Order. (Testimony of Jennifer Mallicoat; State Exhibit C)

6. Walgreens was not following all of Greg Meyer's policies and procedures at the time of the November 7, 2005 inspection. Sarah Morrow and her supervisor, Laura Dickinson, were both unaware that Meyers had submitted store specific policies and procedures to the Board in January 2001. However, portions of Meyers' procedures relating to overnight audits were being followed. Walgreens maintains that it was following its company wide policies and procedures. Since Mallicoat did not consider the company wide policies and procedures, there is no evidence in this record to dispute that the company wide policies were being followed. In addition, Morrow provided Mallicoat with copies of store specific policies and procedures that she has implemented since becoming the pharmacist-in-charge. These procedures had not previously been submitted to the Board for its approval. (Testimony of Sarah Morrow; Jennifer Mallicoat; Laura Dickinson; State Exhibits D, J; Walgreens Exhibit 1, pp. 119)

7. Based on a review of Exhibit 1, Walgreens submitted continuing education verification forms for 14 of 47 employees⁴ (11 pharmacists, 33 pharmacy technicians, and 3 others) known to have been employed in the pharmacy department from the time the

⁴ This number does not include "floaters," i.e. Walgreens' employees who fill in as needed at this location but also work at other Walgreens locations. (Testimony of Jennifer Mallicoat)

Stipulation and Consent Order was signed until the date of the inspection. Walgreens submitted documentation that eight employees completed all three of the courses required by paragraph 7b and that six employees completed one or two of the courses. Walgreens failed to fully comply with paragraph 7b requiring continuing education to be completed by all prescription department employees within a six-month time frame and also failed to timely provide the Board with documentation of completion.

Since the inspection, Walgreens and Sarah Morrow have made a concerted effort to ensure that prescription department employees have completed the required continuing education and to provide documentation to the Board. Walgreens has implemented a new policy requiring all of its employees, regardless of location, to complete the required continuing education. This would ensure that any floater coming to the Walgreens pharmacy at issue in this case would have completed the required education. Walgreens' District Supervisor estimates that this goal will be completed by the end of May 2006. (Testimony of Jennifer Mallicoat; Sarah Morrow; Laura Dickinson; State Exhibit C; Walgreens Exhibit 1, pp. 122-187)

8. The lighted magnifying glass required by paragraph 7e was present in the pharmacy at the time of Mallicoat's inspection but was not in use. Walgreens satisfactorily explained that its new computer software allows it to scan hard copies of prescriptions and then zoom in and magnify the prescription on the computer screen. On February 19, 2006, Walgreens submitted a written request to modify this requirement to provide that the lighted magnifying glass would be available but only had to be used in certain circumstances, e.g. if the scanners broke down or if the prescription hard copy could not be scanned due to its condition. The Board is willing to approve this requested modification. (Testimony of Jennifer Mallicoat; Sarah Morrow; State Exhibit C; Walgreens Exhibit 1, p. 118)

9. During the inspection, Sarah Morrow showed Jennifer Mallicoat her own prescription error entries for the past year in Walgreens' computer software system called Strategical Tracking Analytical Recording System (STARS). Mallicoat viewed the error information on the computer screen and then asked Morrow for a hard copy of a dispensing error. Morrow was initially unwilling to provide a hard copy without a subpoena. As Mallicoat was leaving, Morrow offered to call her supervisor, Laura Dickinson, about obtaining a hard copy of an error report, but Mallicoat did not respond to this offer. A security feature

of the STARS system only permits hard copies to be printed by the corporate office and not at individual store locations. Mallicoat could not recall that Morrow provided this explanation at the time of the inspection. (Testimony of Jennifer Mallicoat; Sarah Morrow; Laura Dickinson; State Exhibit C)

10. Walgreens submitted written verification from only 6 of its 11 pharmacists,⁵ stating that they had read and understood the Stipulation and Consent Order. In addition, Sarah Morrow had obtained signed acknowledgements from the six pharmacists who had been hired in the time since she became the pharmacist-in-charge. Morrow had not submitted the signed acknowledgements to the Board prior to the inspection. (Testimony of Jennifer Mallicoat; Sarah Morrow; State Exhibit C; Walgreens Exhibit 1, pp. 2-7; 120)

11. The quarterly reports filed by Walgreens were usually filed late. The report due September 5, 2003 was over three weeks late; the report due December 5, 2003 was three months late; and the report due June 5, 2004 was filed one month late. The reports due on March 5, 2004, September 5, 2004, December 5, 2004, and March 5, 2005, were all filed for the first time on March 21, 2005. These individual reports are very confusing because do not identify the applicable year and they do not identify the person preparing the report. The report due on June 5, 2005 was filed on November 14, 2005, five months late.

The first quarterly report after Sarah Morrow became the pharmacist-in-charge was due September 5, 2005. The report was filed by email from Laura Dickinson on October 10, 2005. Morrow and Dickinson explained at hearing that Morrow had timely forwarded the quarterly report to Dickinson for her review, to ensure that it was properly prepared. However, Dickinson did not send the report to the Board until October 10, 2005. This report did not contain the pharmacy staffing levels. Since the inspection, Sarah Morrow has submitted the quarterly reports in a timely manner. (Testimony of Jennifer Mallicoat; Sarah Morrow; Laura Dickinson; State Exhibit C; Walgreens Exhibit 1, pp. 47-52, 67-92, 113-117)

⁵ Jennifer Mallicoat identified 11 pharmacists who had worked at this location from the time the Stipulation and Consent Order had been signed until the date of the inspection. This number did not include "floater" pharmacists.

CONCLUSIONS OF LAW

Legal Issues Raised in Walgreens' Trial Brief.

In its brief, Walgreens cites four grounds in support of its argument that this disciplinary proceeding should be dismissed. They will be addressed in the order they were raised.

1. The Board did not include a specific reference to the rules regarding informal settlement in its Notice of Hearing, although it did cite generally to the applicability of 657 IAC chapters 35 and 36. The informal settlement procedures are found at 657 IAC 36.6.

657 IAC 35.5(2)"g" provides that the notice of hearing shall include ...a reference to the procedural rules governing informal settlement. Administrative rules are interpreted and construed under the same rules as statutes. Motor Club of Iowa v. Dept. of Transportation, 251 N.W.2d 510, 518 (Iowa 1977) The use of the word "shall" in a statute imposes a duty. Iowa Code section 4.4. If the word "shall" is ordinarily persuasive evidence as to whether direction of a statute is obligatory, excluding discretion, that does not determine whether the statute is mandatory in the sense of requiring invalidation of governmental action affected by the requirement, as a result of failure to comply. State v. Lohr, 266 NW2d 1, 5 (Iowa 1978) If the prescribed duty is essential to the main objective of the legislation, the statute is ordinarily mandatory and a violation will invalidate subsequent proceedings under it, but if a duty is not essential to accomplishing the principal purpose of the legislation and is designed to assure order and promptness in proceeding, a statute is ordinarily directory and a validation will not invalidate subsequent proceedings, unless prejudice is shown. Taylor v. Iowa Dept. of Transportation, 260 N.W. 2d 521, 522 (Iowa 1977).

The Board is satisfied that any duty imposed under 657 IAC 35.5(2)"g" is directory in nature and not mandatory. The specific citation to the rules governing informal settlement is intended to facilitate order and promptness in proceeding and does not go to the essential purpose of the notice of hearing, which is to apprise a party of the date and time of a hearing and its purpose. Moreover, the notice of hearing cited 657 IAC chapter 36, where the provisions regarding informal settlement procedures are found. Iowa Code section 17A.10(1) specifically provides that parties to a controversy are not required to

utilize informal settlement procedures. The omission of the citation to 657 IAC 36.6 in the Board's notice of hearing does not require or merit dismissal of the Statement of Charges.

2. The Notice of Hearing states that the Board will serve as the presiding officer, but the Board may request an Administrative Law Judge to make initial rulings on prehearing matters and to be present to assist and advise the Board at hearing. 657 IAC 35.19(8) provides that a license disciplinary hearing shall be conducted by an administrative law judge and either a quorum of the board or a panel of not less than three pharmacist members of the board. The rule further provides the duties of the administrative law judge, which include participating in board or panel deliberations and preparing an order containing findings of fact and conclusions of law in accordance with the board's or panel's decisions.

An administrative law judge was present for the hearing and performed the duties outlined in subrule 35.19(8). Any variance between the wording of the notice of the hearing and the Board's rule concerning the role of the administrative rule judge was harmless and does not require or merit dismissal of the Statement of Charges.

3. The Statement of Charges and Counts II and III charge Walgreens with willful and repeated violations, while the cited rule, 657 IAC 36.1(4)(i) refers to willful or repeated violations. Walgreens alleges that the use of the conjunctive "and" in the Statement of Charges injects a substantial measure of vagueness or indefiniteness into the prosecution leaving it unclear what standard must be met. Walgreens further alleges that it is ultra vires and illegal for the Board to use the conjunctive "and" in the Statement of Charges. For these reasons, Walgreens requests dismissal of the Statement of Charges. In the alternative, Walgreens asserts that the state should be required to show that any violations were both willful and repeated before sanctions are imposed under Counts II and III.

Walgreens' arguments are without merit. The statute and rules cited in Counts II and III clearly provide authority for the Board to impose sanctions if a licensee's violations are either willful or repeated. The Statement of Charges put Walgreens on notice that the state was alleging both willful and repeated violations. The notice provided in the Statement of Charges was less vague and more clear than it would have been had the Counts used the word "or" instead of "and." Moreover, these arguments

are moot because this Decision and Order does not find violations under Counts II and III.

4. Walgreens argues that the Board should be held to the criminal standard of proof because 657 IAC 36.1(4) provides that the Board may impose disciplinary sanctions when it determines that the licensee is "guilty" of certain acts or offenses. Walgreens also asserts that the nature of its interest in its pharmacy license requires the highest possible standard of proof. However, the Iowa Supreme Court has previously held that the standard of proof in licensing disciplinary cases for both physicians and veterinarians is a "preponderance of the evidence." Boswell v. Iowa Board of Veterinary Medicine, 477 N.W.2d 366, 369 (Iowa 1991); Eaves v. Board of Medical Examiners, 467 NW2d 234, 237(Iowa 1991) Both of these cases involved statutes which also use the word "guilty." See Iowa Code sections 147.55, 148.6, 169.13. The medical board, veterinary medicine board, and the pharmacy board all function pursuant to Iowa Code chapter 272C. Iowa Code section 272C.1(6)(l), (q), and (w). The applicable standard of proof in this disciplinary proceeding is a preponderance of evidence.

Count I

Count I charges Walgreens with failure to comply with the terms of a Stipulation and Consent Order issued by the Board on December 4, 2002, in violation of Iowa Code section 272C.3(2)(a)(2005).

Iowa Code section 272C.3(2)(a)(2005) provides, in relevant part:

2. Each licensing board may impose one or more of the following as licensee discipline:
 - a. Revoke a license, or suspend a license either until further order of the board or for a specified period,...upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The Stipulation and Consent Order approved by the Board on December 4, 2002 constitutes a decision of the board imposing licensee discipline. Walgreens was required to comply with all of the conditions of probation set out in the Consent Order. Indeed, these were conditions that Walgreens voluntarily agreed to in order to resolve the prior Statement of Charges. The current Statement of Charges and Attachment A put Walgreens on notice that "numerous deficiencies" were noted by the Board's investigators when they reviewed Walgreens' compliance with the

Stipulation and Consent Order. (Attachment A, paragraph 3). The Investigator's Memorandum (State Exhibit C) and the confidential Attachment to the Statement of Charges provided a more complete description of the alleged deficiencies.

The preponderance of the evidence established that Walgreens failed to comply with paragraph 7b of the Stipulation and Consent Order, which required continuing education for all of its prescription department employees. Walgreens' prescription department had at least 47 employees, not counting floaters, during the term of its probation. However, only eight employees completed and documented completion of all three required courses. Six other employees completed and documented completion of one or two of the required courses.

The Stipulation and Consent Order, paragraph 7b clearly states "all employees" of the prescription department are required to comply with the continuing education requirement. This includes all pharmacists, pharmacy technicians, student interns, and "floaters" who work at this location on a fill-in basis. Walgreens claims that it did not understand that the continuing education requirement applied to "floaters." However, even if "floaters" are not considered, Walgreens still failed to comply with the continuing education requirement.

The preponderance of the evidence also established that Walgreens failed to provide documentation that all of its pharmacist employees had read and understood the Stipulation and Consent Order, as required by paragraph 7m. Only six of eleven pharmacists provided the required documentation; none of the "floating" pharmacists provided documentation. Paragraph 7m requires "all pharmacist employees" to sign verification that they have read and understood the Stipulation and Consent Order. Once again, this requirement applies to "floaters" or fill-in pharmacists. However, even if "floaters" are not considered, Walgreens still failed to provide documentation for all of its permanent pharmacist employees.

The preponderance of the evidence also established that Walgreens failed to timely file quarterly reports with the Board as required by paragraph 7o. Walgreens admits that its quarterly reports were disorganized and confusing because many did not include the applicable year and did not identify who was preparing the report. Most all of the reports were late; some were late by several months and one was not submitted until one year after its due date.

After reviewing the entire record, the Board is unable to conclude that Walgreens violated paragraphs 7a and 7d, which required Walgreens to adopt, implement, and adhere to policies and procedures approved by the Board. The Board's investigator evaluated Walgreens' compliance based only on Meyers' store-specific policies and procedures, which the investigator thought had been submitted after the Stipulation and Consent Order was approved but which in fact predate the Stipulation and Consent Order by more than one year and were not officially approved by the Board. The pharmacist-in-charge and her supervisor did not know that Meyers had submitted store specific policies and procedures in 2001. Walgreens did not submit any store-specific policies and procedures between the time that the Stipulation and Consent Order went into effect and the November 7, 2005 inspection.

Walgreens did submit company wide policies and procedures after the Stipulation and Consent Order went into effect, which the Board's investigator had not reviewed at the time of her inspection. Although the Board never formally approved these company wide policies and procedures, Walgreens maintains that it has complied with them, and the state did not present evidence to refute this claim. Due to the confusion about which policies and procedures were controlling, the Board does not make a finding of violation with respect to paragraphs 7a and 7d.

In addition, there was a technical violation of paragraph 7e because the lighted magnifying glass was not in use and Walgreens had not applied for a modification of this requirement at the time of the inspection. Nevertheless, the Board is satisfied that the new computer software system used by Walgreens provided equivalent safeguards against errors in reading hard copies of prescriptions, so long as the lighted magnifying glass was available in the event it was needed. Walgreens has now filed a request to modify this requirement to conform to its current procedures. The Board finds that this request is reasonable and should be granted. The Board does not find a violation of paragraph 7e.

The Board was not convinced that Walgreens violated paragraph 7l when Sarah Morrow refused to provide Investigator Mallicoat with a hard copy of a dispensing error. While it is essential that Walgreens provide all necessary documentation to verify compliance with the terms of the Stipulation and Consent Order, it appears that Morrow's failure to provide the hard copy may have been due to a misunderstanding. Morrow did allow the

investigator to view a year's worth of her own error reports on the STARS system and eventually offered to contact her supervisor to inquire whether a hard copy could be provided without a subpoena. The STARS system security apparently would have prevented Morrow from providing a hard copy even if she had agreed to do so.

Counts II and III

Count II charged Walgreens with willful and repeated violations of Iowa Code Chapters 147 and 272C and the administrative rules. Count III charged Walgreens with a lack of professional competency demonstrated by willful and repeated departures from or failure to conform to the minimal standard and acceptable and prevailing practice of pharmacy in Iowa. All three counts were based on the same facts: violations of the terms of probation. While Walgreens did have repeated violations of the conditions of its probation, the Board finds that Count I adequately and appropriately addresses these violations under Iowa Code section 272C.3(2)(a)(2005). The Board declines to make findings of violation under Counts II and III, and those counts will be dismissed.

Sanction

In determining an appropriate sanction, the Board considered Walgreens' previous disciplinary history, the nature and number of probation violations found in this case, and the purpose behind the probationary conditions imposed in the Stipulation and Consent Order. The Board also considered Walgreens' apparent confusion over some of the probationary requirements and Walgreens' compliance with the terms of probation since the November 7, 2005 inspection.

As provided in the Stipulation and Consent Order, the Board had been willing to consider early termination of probation after Walgreens successfully completed three years of probation or after successful completion of one year of probation at a new location. Sometime after the Stipulation and Consent Order was approved, Walgreens moved to a new location with improved space for the prescription department. However, termination of probation is clearly not warranted at this time because Walgreens has not *successfully* completed one year of probation at the new location. In fact, the Board seriously considered extending the period of probation as a sanction for the probation violations, but decided that there is still sufficient time remaining in the original five-year probationary period for

Walgreens to demonstrate satisfactory compliance and readiness to resume pharmacy practice without probationary restrictions. While the Board is not extending the probationary period beyond that originally set in the Stipulation and Consent Order nor is it imposing a civil penalty for Walgreens' probationary violations, the Board believes that it is both reasonable and necessary to clarify the conditions of probation through this Decision and Order.

The primary purpose of the Stipulation and Consent Order was to ensure that Walgreens reduced the number of dispensing errors occurring at this pharmacy location and to provide the Board with sufficient information to verify that Walgreens was taking the necessary steps to achieve and maintain that goal. Key elements of the Stipulation and Consent Order required Walgreens to provide typewritten policies and procedures for detecting, documenting, resolving and preventing medication dispensing errors and to adopt, implement and adhere to the policies and procedures after review and approval by the Board. Policies and procedures were also required for dispensing accuracy, patient counseling and prospective drug use review. The Board understood both of these provisions to require "store-specific" policies and procedures, not merely generic company wide policies and procedures. Since there was confusion concerning this requirement, it is important to clarify these requirements in this Decision and Order. Additional clarification has been added concerning the applicability of certain requirements to "floaters" in the prescription department.

Decision and Order

The preponderance of the evidence established multiple violations of the conditions of probation set out in the Stipulation and Consent Order approved by the Board on December 4, 2002, in violation of Iowa code section 272C.3(2)(a)(2005). [COUNT I]. Counts II and III are hereby DISMISSED.

IT IS THEREFORE ORDERED that pharmacy license no. 292, issued to Walgreens Pharmacy #07833, shall continue on probation until December 4, 2007, subject to the following terms and conditions:

1. Within sixty (60) days of the issuance of this Decision and Order, Walgreens shall submit typewritten copies of its current *store-specific* policies and procedures for detecting, documenting, resolving, and preventing medication dispensing errors. The policies and procedures shall require that all records of dispensing

errors be consistently and periodically evaluated by the pharmacist in charge or his or her designee as part of a cycle of continuous quality improvement. Records of dispensing errors shall be maintained in the pharmacy for a minimum of one year. Following review and approval by the Board, Walgreens shall adopt, implement and adhere to these policies and procedures when operating its pharmacy. *The Board's Executive Director will notify Walgreens, in writing, when the Board has approved the store-specific policies and procedures or if the Board requires any changes or modifications to the submitted policies and procedures.*

2. As part of its continuous quality improvement program, Walgreens shall require all employees of its prescription department, *including all pharmacists, pharmacy technicians, student interns, and "floaters" or fill-in employees,* to take and complete the Walgreen Company continuing education initiative on preventing and handling medication errors. Specifically, the Walgreen continuing education initiative includes the following continuing education courses: (1) *The Power of Words: Responding Appropriately to a Patient's Concerns about Quality*, David W. Brushwood, R.Ph., J.D.; (2) *Medication Errors in the Community Pharmacy*, Andrea D. Tassone; and (3) *Using Communication Skills to Improve Health Care*, Carla White-Harris. For all existing employees, Walgreens shall provide the Board with documentation of each employee's satisfactory completion of the education within six months of the date of this Decision and Order. For any new employees, Walgreens shall provide the Board with documentation of each employee's satisfactory completion of the education within six months of the date each employee began working at Walgreen's pharmacy. *Pharmacist* employees who have taken any of these courses since September 14, 2001 do not have to take the course again.

3. As part of its continuous quality improvement program, Walgreens shall offer additional training and educational opportunities to employees of the prescription department who make repeated dispensing errors.

4. Within sixty (60) days of the date of this Decision and Order, Walgreens shall provide its typewritten *store specific* policies and procedures for the following: (a) dispensing accuracy, (b) patient counseling, and (c) prospective drug use review. Following review and approval

by the Board, Walgreens shall adopt, implement and adhere to these policies and procedures when operating its pharmacy. *The Board's Executive Director will notify Walgreens, in writing, when the Board has approved the store-specific policies and procedures or if the Board requires any changes or modifications to the submitted policies and procedures.* All pharmacists, supportive personnel, and all local management personnel shall read the written policies and procedures and shall sign written statements certifying that they have read them and agree to comply with the policies and procedures. Walgreens shall maintain copies of these signed statements and make them available to the Board or its designee upon request.

5. Walgreens shall maintain and use a light magnifying glass at its order entry station to magnify hard copies of prescriptions whenever necessary because the hard copy of the prescription cannot be scanned and magnified using the pharmacy's current computer software system.

6. Walgreens shall utilize automated system when appropriate to eliminate drug picking errors when filling prescription orders.

7. Walgreens shall maintain a patient counseling area that is free and clear of any materials that negatively impact the patient counseling area's privacy.

8. The current pharmacist-in-charge is Sarah Morrow. Sarah Morrow shall meet with the Board's Executive Director within thirty (30) days of the issuance of this Decision and Order to review the probationary conditions. Walgreens shall report any change in the pharmacist-in-charge within ten (10) days of the change. The pharmacist-in-charge must be a licensed pharmacist in the state of Iowa whose license is in good standing and not on probation in Iowa or in any other state. Any new pharmacist-in-charge shall meet with the Board's Executive Director to review the probationary conditions within thirty (30) days of assuming the duties of the pharmacist-in-charge.

9. Walgreens shall employ an appropriate number of pharmacists in order to adequately staff the prescription department in a manner that will ensure that the pharmacy is operated competently, safely, legally, and adequately to meet the needs of the patients of the pharmacy.

10. Walgreens shall ensure that the pharmacist-in-charge has the necessary authority to make all necessary staffing decisions relating to Walgreens' prescription department, including hiring, dismissing, and/or transferring employees of the prescription department.

11. Walgreens shall obey all federal and state laws, rules, and regulations substantially related to the practice of pharmacy and the distribution of controlled substances.

12. Walgreens shall submit to random unannounced visits or inspections by the Board or agents of the Board to verify compliance with this Decision and Order.

13. Walgreens shall notify all pharmacists working in its prescription department of the probationary terms, conditions and restrictions imposed on Walgreens by this Decision and Order. Within ten (10) days of the issuance of this Decision and Order or within ten (10) days of when a new pharmacist, *including "floater" pharmacists*, begins working in Walgreens' prescription department, Walgreens shall cause each of its pharmacists to report to the Board in writing acknowledging that the pharmacist has read this Stipulation and Consent Order and understands it.

14. A designated representative of Walgreens shall appear informally before a committee of the Board or the full Board upon the request of the Board, for the purpose of reviewing its performance during the probationary period. Walgreens shall be given reasonable notice of the date, time, and place for the appearances.

15. During probation, Walgreens shall file quarterly written reports with the Board. *Quarterly reports are due on or before March 5, June 5, September 5 and December 5 of each year of probation. The written report shall be dated and signed by the pharmacist-in-charge.* The report shall include information regarding Walgreens' staffing levels (including both pharmacists and supportive personnel); any verified dispensing errors that Walgreens identifies or otherwise becomes aware of through information received from consumers, health care professionals, or others; any judgment or settlement of a malpractice claim or action; any losses or thefts of controlled substances; and any

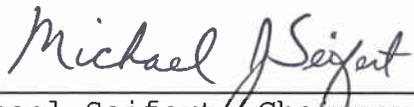
further information deemed necessary by the Board from time to time.⁶

16. Should Walgreens violate or fail to comply with any of the terms or conditions of this Decision and Order, the Board may initiate action to revoke or suspend Walgreens' Iowa license to operate a pharmacy or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.1.

17. Upon successful completion of probation, Walgreens' pharmacy license will be fully restored.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 657 IAC 36.18(2), that Walgreens shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill the Respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. The Respondent shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 7 day of June, 2006.



Michael Seifert, Chairperson
Iowa Board of Pharmacy Examiners

cc: Scott Galenbeck, Assistant Attorney General
Kevin Reynolds, Attorney for Respondent Walgreens
Michael Sellers, Attorney for Respondent Sarah Morrow

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

⁶ Board rules allow records to be maintained in an alternative data retention system, such as a data processing system, provided that the data processing system is capable of producing a hard copy of the record, within two business days, upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies. 657 IAC 6.16(4)(b). See also 657 IAC 21.4(2).

BEFORE THE BOARD OF PHARMACY STATE OF IOWA

**IN THE MATTER OF THE DECISION AND ORDER AGAINST
WALGREENS #07833, RESPONDENT
2005-117**

TERMINATION ORDER

DATE: December 4, 2007

1. On June 7, 2006, a Decision and Order was issued by the Iowa Board of Pharmacy continuing the probation placed on the license to operate a pharmacy, number 292 issued to Walgreens #07833 until December 4, 2007 under certain terms and conditions.

2. Respondent has successfully completed the probation as directed.

3. The Board directed that the probation placed upon the Respondent's license to operate a pharmacy should be terminated.

IT IS HEREBY ORDERED:

That the probation placed upon the Respondent's license to operate a pharmacy is terminated, and the license is returned to its full privileges free and clear of all restrictions.

IOWA BOARD OF PHARAMCY



Paul Abramowitz, Board Chairperson
400 SW 8th Street, Suite E
Des Moines, Iowa 50309-4688

BEFORE THE IOWA BOARD OF PHARMACY

Re:)
Pharmacy License of)
WALGREENS PHARMACY #07833)
License No. 292,)
Respondent.)

Case No. 2009-124

STATEMENT OF CHARGES

COMES NOW, the Complainant, Lloyd K. Jessen, and states:

1. He is the Executive Director for the Iowa Board of Pharmacy and files this Statement of Charges solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 155A and 272C (2009).
3. On December 17, 2009, the Board renewed general pharmacy license number 292 for Walgreens Pharmacy #07833 (hereinafter, "Respondent"), allowing Respondent to engage in the operation of a pharmacy subject to the laws of the State of Iowa and the rules of the Board.
4. General pharmacy license number 292 is current until December 31, 2010.
5. Respondent operates a general pharmacy at 3501 Ingersoll Avenue, Des Moines, Iowa 50312, with Amanda Hicks as the pharmacist in charge.

A. CHARGES

COUNT I – LACK OF PROFESSIONAL COMPETENCY

Respondent is charged under Iowa Code § 155A.15(2)(c) (2009) and 657 Iowa Administrative Code § 36.1(4)(b) with a lack of professional competency as demonstrated by willful and repeated departures from, and a failure to conform to, the minimal standard and acceptable and prevailing practice of pharmacy in the state of Iowa, as evidenced by Respondent’s willful and repeated violations of standards related to patient counseling.

COUNT II -- FAILURE TO PROVIDE COUNSELING

Respondent is charged under Iowa Code § 155A.15(2)(c) (2009), and 657 Iowa Administrative Code §§ 6.14(1) and 36.1(4)(w), with failing to provide counseling to

patients and engaging in business practices intended to circumvent requirements for patient counseling.

B. CIRCUMSTANCES

On or about October 1, 2009, an investigation was commenced which revealed the following:

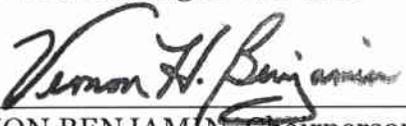
1. Respondent is a general pharmacy located at 3501 Ingersoll Avenue, Des Moines, Iowa, with Amanda Hicks as the pharmacist in charge.
2. Following a complaint that counseling had not been provided to a customer, a Board compliance officer observed the practices of pharmacists, pharmacy technicians and cashiers at Respondent pharmacy. The compliance officer noted the following:
 - a. Pharmacists did not uniformly counsel or offer to counsel regarding 'first time' prescriptions.
 - b. Pharmacy cashiers entered "counseling refused" into the computer system to complete dispensing transactions, despite the fact that a patient had not been offered (and had not refused) counseling.
 - c. Pharmacy technicians attempted to discourage patients from seeking counseling.

Wherefore, the Complainant prays that a hearing be held in this matter and that the Board take such action as it may deem to be appropriate under the law.



LLOYD K. JESSEN
Executive Director

On this 29 day of April 2010, the Iowa Board of Pharmacy found probable cause to file this Statement of Charges and to order a hearing in this case.



VERNON BENJAMIN, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Scott M. Galenbeck
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa

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BEFORE THE IOWA BOARD OF PHARMACY

| | | |
|-------------------------|---|-----------------------------|
| Re: |) | Case No. 2009-124 |
| Pharmacy License of |) | |
| WALGREENS #07833 |) | SETTLEMENT AGREEMENT |
| License No. 292, |) | AND |
| Respondent. |) | FINAL ORDER |

Pursuant to Iowa Code §§ 17A.10 and 272C.3(4) (2011), the Iowa Board of Pharmacy and Walgreens Pharmacy #07833, Respondent, enter into the following Settlement Agreement and Final Order to settle a licensee disciplinary proceeding currently pending before the Board.

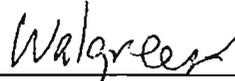
The allegations contained in a Statement of Charges against Respondent shall be resolved without proceeding to hearing, as the Board and Respondent stipulate as follows:

1. Respondent was issued Pharmacy License No. 292. That license is active and current until December 31, 2013.
2. A Statement of Charges was filed against Respondent on April 29, 2010.
3. Respondent all times relevant to the Statement of Charges operated a general pharmacy at 3501 Ingersoll Avenue, Des Moines, Iowa, with Amanda Hicks as the pharmacist in charge.
4. The Board has jurisdiction over the parties and the subject matter of these proceedings.

5. Respondent has chosen not to contest the allegations in the Statement of Charges and acknowledges that the allegations, if proven in a contested case proceeding, would constitute grounds for the discipline agreed to in this Order.
6. Respondent is hereby CITED for failure to provide counseling as identified in the Statement of Charges, and is hereby WARNED that future violations of the law governing the practice of pharmacy in Iowa could result in further disciplinary action.
7. Respondent agrees to pay a civil penalty in the amount of \$1000. This civil penalty shall be made payable to the Treasurer of Iowa and mailed to the executive director of the Board within twenty (20) days of the Board's approval of this Settlement Agreement and Final Order. All civil penalty payments shall be deposited into the State of Iowa general fund.
8. This Settlement Agreement and Final Order is the resolution of a contested case. By entering into this Settlement Agreement and Final Order, Respondent waives all rights to a contested case hearing on the allegations contained in the Statement of Charges, and waives any objections to this Final Order.
9. The State's legal counsel may present this Settlement Agreement and Final Order to the Board.
10. This Settlement Agreement and Final Order is subject to approval by a majority of the full Board. If the Board fails to approve this settlement, it shall be of no force or effect to either the Board or Respondent. If the Board approves this Settlement Agreement and Final Order, it shall be the full and final resolution of this matter.

11. The Board's approval of this Settlement Agreement and Final Order shall constitute a FINAL ORDER of the Board.

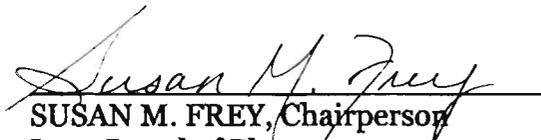
This Settlement Agreement and Final Order is voluntarily submitted by Respondent to the Board for its consideration on the 4th day of February 2013.



For Respondent

By his signature Mike Fulk acknowledges he is the Pharmacy Supervisor for Walgreens Pharmacy and is authorized to sign this Settlement Agreement and Final Order on behalf of Walgreens Pharmacy #07833.

This Stipulation and Consent Order is accepted by the Iowa Board of Pharmacy on the 13th day of March 2013.



SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy
400 SW Eighth Street, Suite E
Des Moines, Iowa 50309-4688

cc: Theresa O=Connell Weeg
Assistant Attorney General
Office of the Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Kevin M. Reynolds
WHITFIELD & EDDY, P.L.C.
317 6th Ave., Suite 1200
Des Moines, IA 50309